

~~ORIGINAL~~

No. 11970

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United States  
Circuit Court of Appeals  
for the Ninth Circuit

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TIGHE E. WOODS, Housing Expediter, Office of  
the Housing Expediter,  
Appellant,

vs.

FREDERICK I. RICHMAN and LYDA BLITHE  
RICHMAN NAGEL,  
Appellees.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division

FILED

SEP 1 1948



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record ing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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\* Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States, Southern  
District of California, Central Division

No. 504-BH

FRANK R. CREEDON, Housing Expediter, Office  
of the Housing Expediter,

Plaintiff,

vs.

FREDERICK I. RICHMAN, LYDA BLITHE  
RICHMAN NAGEL, DOE I and DOE II,  
Defendants.

COMPLAINT FOR RESTITUTION AND  
INJUNCTION

FOR A FIRST CAUSE OF ACTION

I.

Plaintiff, as Housing Expediter, Office of the Housing Expediter, brings this cause of action for restitution pursuant to Section 205(a) to enforce compliance with Section 4 of the Emergency Price Control Act of 1942, as amended, USCA Title 50, App. Sec. 901 et seq., and the Rent Regulations (10 Fed. Reg. 13528) issued by the Administrator pursuant to Section 2 of the Emergency Price Control Act of 1942, as amended, and/or brings this cause of action pursuant to Section 206 of the Housing and Rent Act of 1947, and the Rent Regulations issued pursuant thereto.

II.

Jurisdiction of this cause of action is conferred upon this Court by Sections 205(e) of the Emergency Price Control Act of 1942, as amended, [2]



and/or Section 206 of the Housing and Rent Act of 1947.

### III.

At all times mentioned herein, up to and including June 30, 1947, there was in effect a Rent Regulation for Housing, issued pursuant to Section 2(b) of the Emergency Price Control act of 1942, as amended, for the Los Angeles Defense Rental Area, and/or on and since July 1, 1947, the housing accommodations herein described have been subject to maximum rents authorized and established by the Housing and Rent Act of 1947, and rent regulations issued pursuant thereto.

### IV.

That the defendants, Doe I and Doe II, are the fictitious names of the defendants, whose true names are to this plaintiff unknown, and plaintiff asks that when these true names are discovered this complaint may be amended by inserting such true names in the place and stead of such fictitious names. Wherever the word "defendant" is used in this complaint, it shall include all of the defendants, individually and collectively herein sued.

### V.

That the defendant is a resident of the City of Los Angeles, County of Los Angeles, State of California, in the Southern District of California, in the Central Division thereof, and within the jurisdiction of this Court.

### VI.

During all times herein mentioned defendant has received rent for the use and occupancy of those

certain housing accommodations, subject to said Acts and Regulations within said Defense Rental Area, known and described as the Fountain Manor Apartments, 5165 Fountain Avenue, Los Angeles, California.

## VII.

That on and since March 1, 1942, exclusive of the period of July 1 to July 25, 1946, inclusive, the defendant has received for the use and occupancy of the housing accommodations hereinbefore described, rents in excess of the maximum rents permitted under the said Rent Regulations and Orders of the Rent Director; that the number and names of tenants and the [3] amount of overcharges are facts peculiarly within the knowledge of said defendant; that plaintiff is unable at this time to allege with certainty the amount of rents charged in excess of said maximum rent but that plaintiff upon ascertaining the amount or amounts thereof, and the names of said tenants, will ask leave to amend this complaint and set forth the amount or amounts of said overcharges and the tenants from whom said overcharges were received.

## FOR A SECOND CAUSE OF ACTION

### I.

Plaintiff re-alleges and incorporates herein Paragraphs I, II, III, IV, V, VI and VII of his first cause of action as though set out in full herein.

### II.

In the judgment of the Housing Expediter, Office of the Housing Expediter, said defendants have engaged in acts and practices in violation of Sec-

tion 4(a) of the Emergency Price Control Act of 1942, as amended, USCA Title 50, App. Sec. 901 et seq., and/or in violation of Section 206(a) of the Rent and Housing Act of 1947, which acts and practices consist of violations of Rent Regulations for Housing (10 Fed. Reg. 13528) issued in accordance with Section 2(b) of the Emergency Price Control Act of 1942, as amended, and/or the Housing Regulation issued pursuant to the Housing and Rent Act of 1947, and therefore the Housing Expediter brings this cause of action pursuant to the provisions of Section 206 of the Housing and Rent Act of 1947. Jurisdiction of this cause of action is conferred by Section 206 of the Housing and Rent Act of 1947.

Wherefore, the plaintiff prays:

A. That the defendant be ordered and directed to tender to all available tenants who are entitled thereto a refund of all amounts in excess of the maximum rents established by the Emergency Price Control Act of 1942, as amended, and Regulations issued thereunder, and/or the Housing and Rent Act of 1947, and Regulations issued thereunder, which were received by the defendant, his agents, servants, employees and attorneys from said persons [4] as rent for the use and occupancy of the housing accommodations described in the complaint, since the date maximum rents were established therefor by said Acts and Regulations.

B. A preliminary and final injunction enjoining the defendants, their agents, servants, employees, and all persons in active concert or participation

with them from directly or indirectly demanding or receiving for accommodations subject to the Rent Regulations issued pursuant to the Housing and Rent Act of 1947, rents in excess of the maximum rents permitted under the Rent Regulations issued pursuant to the Housing and Rent Act of 1947.

ABE I. LEVY,  
STEPHEN D. MONAHAN,  
FRANK L. HIRST,  
RICHARD G. SOLOF,

By /s/ RICHARD G. SOLOF,  
Attorneys for Plaintiff.

[Endorsed]: Filed Aug. 15, 1947. [5]

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[Title of District Court and Cause.]

AMENDED COMPLAINT FOR TREBLE  
DAMAGES AND INJUNCTION  
FOR A FIRST CAUSE OF ACTION

I.

Plaintiff, as Housing Expediter, Office of the Housing Expediter, brings this action for injunction pursuant to Section 205(a) to enforce compliance with Section 4 and for treble damages on behalf of the United States of America pursuant to Section 205(e) of the Emergency Price Control Act of 1942, as amended, USCA Title 50, App. Sec. 901 et seq., and the Rent Regulations (10 Fed. 13528) issued by the Administrator pursuant to Section 2 of the Emergency Price Control Act of

1942, as amended, and pursuant to Section 206 of the Housing and Rent Act of 1947.

II.

Jurisdiction of this cause is conferred upon this Court by Sections 205(c) and 205(e) of the Emergency Price Control Act of 1942, as amended. [6]

III.

At all times mentioned herein, up to and including June 30, 1947, there was in effect a Rent Regulation for Housing issued pursuant to Section 2(b) of the Emergency Price Control Act of 1942, as amended, for the Los Angeles Defense Rental Area, and on and since July 1, 1947, the housing accommodations herein described have been subject to maximum rents authorized by the Housing and Rent Act of 1947.

IV.

That the defendants, Doe I and Doe II, are the fictitious names of the defendants, whose true names are to this plaintiff unknown, and plaintiff asks that when these true names are discovered this complaint may be amended by inserting such true names in the place and stead of such fictitious names. Wherever the word "defendant" is used in this complaint, it shall include all of the defendants individually and collectively herein sued.

V.

That the defendant is a resident of the City of Los Angeles, County of Los Angeles, State of California, in the Southern District of California in the Central Division thereof, and within the jurisdiction of this Court.



## VI.

During all times herein mentioned defendant has received rent for the use and occupancy of those certain housing accommodations, subject to said Housing Regulation within said Defense Rental Area, known and described as the Fountain Manor Apartments, 5165 Fountain Avenue, Los Angeles, California.

## VII.

Defendant received from persons for the use and occupancy of the hereinafter described accommodations, rents in excess of the maximum rents established by said Rent Regulations; that there is attached hereto and by reference made a part hereof, as though fully set out herein, a statement of [7] the names of the persons overcharged, the period of occupancy of such persons, the maximum rent, the rent received from said persons and the amount of overcharges.

## VIII.

That every tenant overcharged as above alleged has failed to institute an action pursuant to Section 205(e) of the Emergency Price Control Act of 1942, as amended, and more than thirty days have elapsed since the occurrence of the violations.

## FOR A SECOND CAUSE OF ACTION

## I.

Plaintiff re-alleges and incorporates herein Paragraphs I, II, III, IV, V, VI and VII of his first cause of action, as though set out in full herein.

## II.

In the judgment of the Housing Expediter, Office of the Housing Expediter, said defendants have engaged in actions and practices in violation of Section 4(a) of the Emergency Price Control Act of 1942, as amended, USCA Title 50, App. Sec. 901 et seq., which actions and practices consist of violations of Rent Regulations for Housing (10 Fed. Reg. 13528) issued in accordance with Section 2(b) of the Emergency Price Control Act of 1942, as amended, and therefore the Housing Expediter brings this action pursuant to the provisions of Section 4(a) of the Emergency Price Control Act of 1942, as amended, and also pursuant to Section 206 of the Housing and Rent Act of 1947. Jurisdiction of this action is conferred by Section 205(c) of the Emergency Price Control Act of 1942, as amended, and Section 206 of the Housing and Rent Act of 1947.

Wherefore, the plaintiff demands:

A. Judgment for the plaintiff to recover of the defendant treble the total amounts received by the defendant from persons as rent for the use and occupancy of the housing accommodations described in the complaint, which were in excess of the maximum rents established by the Emergency Price Control Act of 1942, as amended, and Regulations issued thereunder, and further that; [8]

B. The defendant be ordered and directed to tender to all available tenants as are entitled there-to a refund of all amounts in excess of the maximum rents established by the Emergency Price Control

Act of 1942, as amended, and Regulations issued thereunder which were received by the defendant, his agents, servants, employees and attorneys from said persons as rent for the use and occupancy of the housing accommodations described in the complaint, since the date maximum rents were established therefor by said Regulations, provided that refunds made by the defendant to such persons, in compliance with the directions of the Court for rents received within one year prior to the bringing of this action, shall be deducted from the amount of the judgment prayed for in the preceding Paragraph "A".

C. A preliminary and final injunction enjoining the defendants, their agents, servants, employees, and all persons in active concert or participation with them from directly or indirectly demanding or receiving, for accommodations subject to the Rent Regulations for Housing, rents in excess of the maximum rents permitted under the Rent Regulations for Housing, or any other Regulations for Housing issued pursuant to the Housing and Rent Act of 1947.

ABE I. LEVY,  
STEPHEN D. MONAHAN,  
FRANK L. HIRST,  
RICHARD G. SOLOF,

By /s/ RICHARD G. SOLOF,  
Attorneys for Plaintiff.



## SCHEDULE OF RENTS—5165 Fountain Avenue, Los Angeles, California.

## RECEIVED BY DEFENDANT, HANNAH E. WEITZ

Apt. No.	Tenants Name	Period of Occupancy	Rent Collected	Maximum Legal Rent	Amount of Overcharges
206	A. N. Castro.....	9- 1-42 to 1- 7-44	\$ 60.00	\$45.00	\$25.00
204	Billie Klein .....	4- 1-43 to 11- 1-43	75.00	70.00	40.00
219	Frank A. Lawria.....	9-12-43 to 1-15-44	40.00	35.00	20.00
304	S. B. Temple .....	11- 1-42 to 1-15-44	65.00	60.00	67.49
401	Mr. & Mrs. Wm. J. McNichol 12- 1-42 to 1-15-44 (Mrs. McNichol's maiden name, Margaret Sundberg)		100.00	75.00	312.50
413	Morris Munitz .....	April 1943 to June 15, 1944	52.50	47.50	47.90
Total Overcharges .....					<u>\$712.89</u>

## SCHEDULE OF RENTS—5165 Fountain Ave., Los Angeles, Calif.

Received by Defendants—Frederick I. Richman, Lydia Blithe Richman Nagel, and Doe II.

Apt. No.	Tenant's Name	Period of Occupancy	Rent Collected	Maximum Legal Rent	Amt. of Overcharges
114	Mrs. J. B. Norton.....	Sept. 7, 1947 to Sept. 30, 1947	\$24.50 per wk.	\$15.50 per wk.	\$32.50
206	A. N. Castro.....	Jan. 7, 1944 to Dec. 30, 1945	\$60.00 per mo.	\$45.00 per mo.	\$345.00
210	Zelda Adelman.....	Aug. 1, 1947 to Sept. 30, 1947	\$50.00 per mo.	\$40.00 per mo.	\$20.00
219	Frank A. Lauria.....	Jan. 16, 1944 to May 26, 1944	\$40.00 per mo.	\$35.00 per mo.	\$21.66
219	Frank A. Lauria.....	May 27, 1944 to Sept. 30, 1947	\$45.00 per mo.	\$35.00 per mo.	\$390.00
223	Mrs. Julia Klein.....	Jan. 16, 1944 to May 5, 1944	\$95.00 per mo.	\$80.00 per mo.	\$54.50
304	S. B. Temple.....	Jan. 15, 1944 to May 1, 1944	\$65.00 per mo.	\$60.00 per mo.	\$17.49
304	S. B. Temple.....	May 1, 1944 to Aug. 1, 1946	\$70.00 per mo.	\$60.00 per mo.	\$260.00
306	Harold Leyton.....	March 28, 1947 to Sept. 30, 1947	\$ 4.00 per day	\$80.00 per mo.	\$296.00
323	Harry Wayne McMahan.....	July 21, 1944 to Aug. 3, 1944	\$ .72 per day for 4th person	no registra- tion for 4 occupants	\$9.36

Schedule of Rents—5165 Fountain Ave., Los Angeles, Calif. Received by Defendants—Frederick I. Richman,  
Lydia Blithe Richman Nagel, and Doe II.—(Continued).

Apt. No.	Tenant's Name	Period of Occupancy	Rent Collected	Maximum Legal Rent	Amt. of Overcharges
401	Mr. & Mrs. Wm. J. McNichol.....	Jan. 16, 1944 to July 1, 1944	\$110.00 per mo.	\$95.00 per mo.	\$82.00
401	Mr. & Mrs. Wm. J. McNichol.....	July 1, 1944 to Oct. 20, 1944	\$100.00 per mo.	\$75.00 per mo.	\$91.66
401	John C. Houchins.....	July 23, 1947 to Sept. 6, 1947	\$52.50 per wk.	\$30.00 per wk.	\$138.75
407	Mrs. Russell Simpson.....	May 1, 1944 to April 10, 1946	\$75.00 per mo.	\$65.00 per mo.	\$233.35
408	Mr. Vincent Murphy.....	July 17, 1947 to Oct. 2, 1947	\$24.50 per wk.	\$15.00 per wk.	\$104.50
412	Mr. Harold Cousins.....	May 15, 1944 to Aug. 15, 1947	\$57.50 per mo.	\$47.50 per mo.	\$380.00
413	Mr. Morris Munitz.....	Jan. 15, 1944 to May 15, 1944	\$52.50 per mo.	\$47.50 per mo.	\$20.00
413	Mr. Morris Munitz.....	May 15, 1944 to Sept. 30, 1947	\$50.00 per mo.	\$47.50 per mo.	\$97.50
418	Mr. Evan Whitlock.....	Nov. 16, 1945 to Dec. 15, 1946	\$24.50 per wk.	\$17.50 per wk.	\$84.00
Total Overcharges.....					\$2,678.32

On or about May 1944 defendants, Frederick I. Richman and Lydia Blithe Richman Nagel decreased services and have ever since furnished decreased services in the following particulars, to wit:

1. Decreased linen service
2. Decreased garbage removal
3. Discontinuation of cleaning and maintenance of furnishings
4. Discontinuation of replacement of furnishings
5. Discontinuation of demothring service and insect control

6. Decreased cleaning service of the hallways which said decreased services result in unliquidated overcharges which are in addition to the liquidated overcharges hereinbefore set forth.

Statement referred to in Paragraph VII of Plaintiff's amended complaint.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Oct. 10, 1947. [12]

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[Title of District Court and Cause.]

ANSWER OF DEFENDANTS FREDERICK I.  
RICHMAN AND LYDA BLITHE RICHMAN  
NAGEL

Come now the defendants Frederick I. Richman and Lyda Blithe Richman Nagel, and answering the plaintiff's amended complaint on file herein for themselves alone and not for any or either of their co-defendants, admit, deny and allege as follows, to wit:

ANSWER TO PURPORTED FIRST CAUSE  
OF ACTION

I.

Answering paragraph I of the purported First Cause of Action set forth in said amended complaint, these defendants and each of them allege that the Emergency Price Control Act of 1942, as amended, (USCA Title 50, App. Sec. 901 et seq.) terminated or expired on June 30, 1947, and from and after said date no maximum rents were maintained or established under or by authority of said Act with respect to any housing or hotel accommodations whatsoever.

II.

Answering paragraph II of said purported First Cause of Action, these defendants and each of them deny that jurisdiction of [14] this action is conferred upon this Court by Sections 205(c) and 205(e) of the Emergency Price Control Act of 1942, as amended, or by any other term or condition of said Act; and in this connection these defendants and each of them allege that said Emergency Price Control Act of 1942 terminated as of June 30, 1947.

III.

Answering paragraph III of said purported First Cause of Action, these defendants and each of them deny that on and since July 1, 1947, on or since July 1, 1947, the premises or accommodations referred to in said complaint have been subject to maximum rents either under the Housing and Rent Act of 1947, or otherwise, or at all; and in this

connection these defendants allege that the premises and accommodations referred to in said amended complaint are not and have not been "controlled housing accommodations" within the meaning of the Housing and Rent Act of 1947.

#### IV.

Answering paragraph V of said purported First Cause of Action, these defendants and each of them admit that the defendant Frederick I. Richman is a resident of the City of Los Angeles, County of Los Angeles, State of California; but these defendants deny that the defendant Lyda Blithe Richman Nagel is or was at any time in said amended complaint mentioned a resident of the State of California.

#### V.

Answering paragraph VI of said purported First Cause of Action, these defendants deny that the accommodations or premises mentioned in said amended complaint are or ever have been subject to said or any housing regulation within said or any defense rental area; and in this connection allege that, save and except as hereinafter expressly admitted, no part or portion of the premises or accommodations have been or are subject to any housing regulation issued within said or any defense rental area.

Further answering said paragraph, these defendants and each [15] of them allege that they are trustees under a declaration of trust executed November 1, 1945, and that as such trustees, have been ever since January 2, 1946, and now are the owners of the Fountain Manor Apartment Hotel, situate



at 5165 Fountain Avenue, which building is and at all times has been known as the Fountain Manor Apartment Hotel and not as the Fountain Manor Apartments.

## VI.

Answering paragraph VII of said purported First Cause of Action, these defendants and each of them deny that they have received rents in excess of the maximum rents established for said premises by any rent regulation either as in said paragraph alleged, or otherwise, or at all, and with particular reference to the exhibit or statement referred to in said paragraph VII, these defendants admit, deny and allege as follows, to wit:

(a) "Apartment No. 114." Allege that said accommodations have not been since June 30, 1947, and are not now, subject to a maximum rent either as alleged in said amended complaint or otherwise, or at all;

(b) "Apartment No. 206." Allege that on March 16, 1945 (OPA Docket No. 56342), the rate for said unit was fixed by the then Office of Price Administration at \$60.00 per month; that prior hereto these defendants restored or repaid to A. N. Castro the difference between \$45.00 and \$60.00 per month for the period from January 17, 1944, to March 16, 1945;

(c) "Apartment No. 210." Allege that said unit has not been since June 30, 1947, and is not now subject to any maximum rent either as alleged in said amended complaint or otherwise, or at all;

(d) "Apartment No. 219." Allege that on acquiring the premises, these defendants were advised by the former owner that the maximum rent for said unit was \$45.00; [16] that thereafter and on September 26, 1945 (OPA Docket No. 200403), the then Office of Price Administration reduced the rate for said unit to \$35.00 per month; that since said date there has been paid for said accommodations by the occupant thereof, to wit, Frank A. Lauria, the sum of \$35.00 and no more; that prior hereto these defendants repaid and restored to said Frank A. Lauria the excess of \$10.00 per month paid for said unit over and above the maximum rate fixed therefor prior to said September 26, 1945.

These defendants further allege that since June 30, 1947, said unit has not been and is not now subject to any rent regulation either as alleged in said amended complaint or otherwise, or at all;

(e) "Apartment No. 223." Allege that defendants collected for the use and occupancy of said unit the sum of \$80.00 per month and no more; deny that they collected the sum of \$95.00 or any sum in excess of said \$80.00;

(f) "Apartment No. 304." Allege that the maximum rate for said unit fixed by the then Office of Price Administration pursuant to regulations issued for hotel and residential hotel accommodations under the Emergency Price Control Act of 1942, as amended, was the sum of \$70.00 per month;

Allege that said unit has not been since June 30, 1947, and is not now subject to any maximum rent



regulation either as alleged in said complaint or otherwise, or at all;

(g) "Apartment No. 306." Allege that since March 14, 1947, said unit has not been and is not now subject to any maximum rent regulation either as alleged in said complaint or otherwise, or at all;

(h) "Apartment No. 323." Deny that any sum or amount whatsoever in excess of the maximum rate relating to said unit was collected for the use or occupancy thereof during the dates alleged in said complaint or otherwise, or at all;

(i) "Apartment No. 401." Allege that at the time these defendants acquired said premises, the registered rate for said unit was as follows: \$100.00 per month for one or two persons and \$110.00 per month for three persons; that thereafter and on or about September 26, 1945, the then Office of Price Administration determined that the proper rate for said unit was as follows: \$85.00 for one person, \$75.00 for two persons, and \$95.00 for three persons; that upon said determination the defendants repaid to the occupants of said unit \$300.00 collected in excess of the amount determined as hereinbefore alleged to have been the ceiling for said unit; that save and except as herein admitted and alleged, these defendants deny generally and specifically each and all of the allegations relating to said apartment in said amended complaint contained; and further allege that since July 1, 1947, said unit has not been and is not now subject to

any maximum rent regulation either as in said amended complaint alleged or otherwise;

(j) "Apartment No. 407." Allege that the maximum rate fixed for said unit by the then Office of Price Administration pursuant to the regulations relating to hotels and residential hotels is and was the sum of \$75.00 between the dates of May 1, 1944, to April 10, 1946, inclusive; [18]

(k) "Apartment 408." Allege that since June 30, 1947, said unit has not been and is not now subject to any maximum rent as alleged in said amended complaint or otherwise, or at all;

(l) "Apartment 412." Allege that from May 15, 1944, to June 30, 1947, the maximum rent fixed for said unit by the Office of Price Administration pursuant to regulations issued for hotels and residential hotels was the sum of \$57.50; and further allege that since June 30, 1947, said unit has not been and is not now subject to any maximum rent either as alleged in said complaint or otherwise, or at all;

(m) "Apartment No. 413." Allege that on May 1, 1944, the then Office of Price Administration (OPA Docket No. 18699) fixed the maximum rate for said unit at \$50.00 per month, and there has been paid for the use and occupancy of said unit since said date the sum of \$50.00 per month and no more; allege that since June 30, 1947, said unit has not been and is not now subject to any maximum rent either as alleged in said complaint or otherwise, or at all;

(n) "Apartment No. 418." Allege that the rate

fixed by the then Office of Price Administration as the maximum rate for said unit was between the dates of November 16, 1945, to December 15, 1946, inclusive, the sum of \$3.50 per day, and save and except as herein admitted and alleged these defendants deny each and every allegation relating to said apartment in said paragraph contained.

Further answering said paragraph VII of said purported First Cause of Action, these defendants and each of them deny that they have collected or received the sum of \$2678.32 or any other amount or sum whatsoever in excess of the maximum legal rate applicable to said units. [19]

## ANSWER TO PURPORTED SECOND CAUSE OF ACTION

### I.

Defendants refer to and adopt Paragraphs I, II, III, IV, V and VI of their Answer to the purported First Cause of Action set forth in said amended complaint, as fully and completely as if the said Paragraphs and each of them were here copied and set forth at length.

### II.

Answering paragraph II of said purported Second Cause of Action, these defendants allege that the Emergency Price Control Act of 1942 terminated as of June 30, 1947. Further answering the said paragraph, these defendants deny, save and except as hereinbefore expressly admitted, that they have received or accepted for any of the units

referred to or described in the complaint on file herein any rent or rate in excess of the maximum rent or rate applicable to the unit in question.

As a first, separate and affirmative defense to the amended complaint on file herein, these defendants allege:

I.

That any cause of action of the plaintiff herein for or on account of any amount or amounts received by the defendant herein for the use or occupancy of any of the units described in the said complaint prior to the 10th day of October, 1946, is barred by the provisions of Section 925 of the Emergency Price Control Act of 1942, as amended (USCA Title 50, App. Sec. 901 et seq.).

As a second, separate and affirmative defense to the amended complaint on file herein, these defendants allege:

I.

That on January 17, 1944, and at all times since said date, to January 2, 1946, the defendants Frederick I. Richman and Lyda Blithe Richman Nagel were the owners of the property hereinafter mentioned; that since said January 2, 1946, said defendant were and now [20] are the owners as trustees under the declaration of trust dated November 1, 1945, of the Fountain Manor Apartment Hotel, situate at 5165 Fountain Avenue, Los Angeles, California, which is the same building and premises described and referred to in the amended complaint on file herein.

II.

That on June 30, 1947, and at all times subsequent thereto, said Fountain Manor Apartment Hotel has been and now is commonly known as a hotel in the community in which it is located and occupied by persons who are provided with customary hotel service such as maid service, furnishing and laundering of linens, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bell-boy service, and since said date has not been and is not now subject to control by plaintiff herein.

III.

That pursuant to regulations issued by the plaintiff herein under and pursuant to the Housing and Rent Act of 1947, the plaintiff herein found and determined that the said Fountain Manor Apartment Hotel was on June 30, 1947, and at all times subsequent thereto has been an establishment which is commonly known as a hotel in the community in which it is located and was and is occupied by persons who are provided customary hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures and bell-boy services, and therefore was not subject to control by the plaintiff herein.

Wherefore Defendants Pray: That plaintiff take nothing by its amended complaint on file herein; that defendants recover their costs of suit herein incurred and expended; and for such other and



further affirmative relief as the Court deems proper in the premises.

/s/ FREDERICK I. RICHMAN,  
and

/s/ ALLEN T. LYNCH,  
BAILIE, TURNER & LAKE,

By /s/ ALLEN T. LYNCH,

Attorneys for Defendants, Frederick I. Richman  
and Lyda Blithe Richman Nagel.

[Verified.]

[Affidavit of service by mail attached.]

[Endorsed]: Filed Nov. 3, 1947. [21]

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[Title of District Court and Cause.]

DISMISSAL WITH PREJUDICE AS TO  
DEFENDANT HANNAH E. WEITZ

Plaintiff hereby dismisses the above entitled action with prejudice as to defendant Hannah E. Weitz.

Dated this 30th day of December, 1947.

ABE I. LEVY,  
STEPHEN D. MONAHAN,  
FRANK L. HIRST,  
RICHARD G. SOLOF,  
CASSEL JACOBS,

By /s/ CASSEL JACOBS,

Attorneys for Plaintiff.

Judgment entered Dec. 31, 1947. Docketed Dec. 31, 1947, Book 47, Page 625. Edmund L. Smith, Clerk.

[Endorsed]: Filed Dec. 31, 1947. [23]

[Title of District Court and Cause.]

PLAINTIFF'S OBJECTIONS TO DEFENDANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I.

The pretrail stipulation which is quoted beginning at line 31, page 1 of plaintiff's proposed findings of fact and conclusions of law should be deleted. Paragraph 1 of the stipulation constitutes an amendment of the pleadings and consequently has no place in the findings of fact and conclusions of law. Paragraph 2 of the stipulation defines the fact issue and states the applicable law. Counsel for defendants at the trial of the case contended that Paragraph 2 was in no way binding upon the Court or upon the parties. Counsel for defendants and the Court proceeded in the trial of the case without regard to Paragraph 2 of the stipulation either as to the statement of law therein or the limitation of the issues of fact. Consequently, the incorporation of Paragraph 2 in the findings of fact and conclusions of law is only misleading..

Only stipulations of evidential facts are properly incorporated in findings.

8 Cyclopedia of Federal Procedure, Section 3417. [26]

II.

The recitation in the findings beginning at line 5 on page 3 of the evidence offered does not state the complete offer of evidence made. In addition

to the testimony relative to Apartment No. 412, it was stipulated by the parties that the testimony of plaintiff's witnesses, Mrs. Marie B. Schoening, Mrs. Roberta Strobl, and Mrs. Russell Simpson, would relate to overcharges prior to July 1, 1947. These witnesses were then dismissed because under the ruling of the Court their testimony would not have been received. The recital of the proceedings should include this stipulation if they are to recite the evidence in detail as is done in this paragraph of the findings.

### III.

Paragraph 2 appearing on page 3 of the findings is incorrect. The Federal District Court has jurisdiction of any case brought by the Housing Expediter under the Emergency Price Control Act of 1942, as amended and extended, or the Housing and Rent Act of 1947.

*Bell v. Hood* (1945), 90 L. Ed. 939, 327 U. S. 678, 66 S. Ct. 773.

### IV.

The findings beginning with the word "each" at line 29 on page 33 are entirely beyond any evidence introduced by defendants.

### V.

The findings beginning at line 2 on page 4 where it reads, "and at all times in said complaint alleged, the maximum rent for said Apartment No. 412 was in the sum of \$57.50 per month for occupancy by 3 persons" was not shown by the evidence or established as law. The findings beginning with the



word "and" at line 6 on page 4 and finishing the paragraph was not established in law or in fact.

The evidence established just the reverse. Mr. Cousins paid \$57.50 rent for Apartment No. 412 on August 15, 1946. That testimony is uncontradicted. Therefore Mr. Cousins made one excessive rental payment within one year of the filing of the complaint. The evidence shows that at this time the legal maximum rent [27] was \$47.50. Therefore judgment should be for the plaintiff for treble the amount of this overcharge.

The defendants' testimony showed that on March 1, 1942, "the base period," Apartment No. 412 was occupied by two persons only. The uncontradicted testimony of Mr. Cousins showed that he rented the apartment for three people in April 1942 and paid \$47.50 rent. Since this was the first renting to three people after the inception of rent control, the renting established the rate for three people at \$47.50. Therefore, the findings to which I have objected were established neither in fact nor in law at the trial.

## VI.

There is no Section 925 of the Emergency Price Control Act of 1942, which is cited at line 29 on page 4. I presume that the section intended is Section 205.

## VII.

The conclusion of law in Paragraph 3 at page 4 is not deducible from the evidence. Plaintiff only attempted to show rent overcharges prior to July 1,

1947, and offered no evidence of any acts of defendants Richman and Nagel since that date. Plaintiff acted in accordance with the pretrial stipulation as to the issue of fact, and this conclusion of law is a finding entirely outside the pleadings.

Dated this 16th day of March, 1948.

ABE I. LEVY,  
STEPHEN D. MONAHAN,  
FRANK L. HIRST,  
RICHARD G. SOLOF,  
CASSEL JACOBS,

By /s/ CASSEL JACOBS,  
Attorneys for Plaintiff.

Overruled. March 18, 1948.

/s/ CHARLES C. CAVANAH,  
Judge. [28]

Received the within Plaintiff's Objections to Defendants' Proposed Findings of Fact and Conclusions of Law this 16th day of March, 1948.

BAILIE, TURNER & LAKE,

By /s/ D. YOUNG,  
Attorneys for Defendants.

[Endorsed]: Filed March 16, 1948. [29]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

The above entitled action came on regularly for trial before the Honorable Charles C. Cavanah sitting as Judge of the above entitled court, on the 11th day of February, 1948, at the hour of 10:00 o'clock a.m., Cassel Jacobs, Esq. appearing as counsel for plaintiff, and Allen T. Lynch of Bailie, Turner & Lake appearing as counsel for the defendants, Frederick I. Richman and Lyda Blithe Richman Nagel, and Tighe Woods having been substituted as plaintiff herein, and the plaintiff having dismissed as to all defendants except as to the said defendants Richman and Nagel, and it appearing that a pre-trial stipulation was made and entered into by and between the plaintiff and said defendants reading as follows (omitting title and signatures):

“Plaintiff, and defendant Frederick I. Richman, and defendant Lydia Richman Nagel, through their respective attorneys, stipulate as follows: [30]

“1. The schedule to plaintiff’s amended complaint shall be amended by striking out all items except the following:

Apt.	Tenant’s Name	Period of Occupancy	Rent Collected	Maximum Legal Rent	Amount of Overcharge
407	Mrs. Russell Simpson	May 1, 1944 to April 10, 1946	\$75.00 per mo.	\$65.00	\$233.53
412	Mr. Harold Cousins	May 15, 1944 Aug. 15, 1947	\$57.50 per mo.	\$47.50 per mo.	\$380.00
Total					\$613.35

“The only fact at issue relative to the aforesaid items is the maximum legal rent. This fact at issue is whether each of said apartments was occupied by 2 or 3 people on March 1, 1942 the ‘base period’. If 2 people occupied the apartment during the base period, the rent collected by the defendants was not in excess of the maximum rent. On the other hand, if 3 people occupied the apartment during the base period, then the rent collected by the defendants was in excess of the maximum rent to the extent hereinbefore indicated.

“Dated at Los Angeles, California this 27 day of January, 1948.”

And it appearing to the court that this action was commenced on the 14th day of August, 1947, and the Court having determined at the commencement of the trial, that as a matter of law the plaintiff had no cause of action on account of the alleged violations relating to Apartment No. 407 referred to in the foregoing stipulation, and that plaintiff had no cause of action for the recovery of any rents paid in excess of the maximum fixed under the Housing and Rent Act of 1947, but only a cause of action under said act for injunctive relief to enjoin any act or practice that constituted a violation of the said act, and that the Court might, if it determined that the defendants were guilty of any such act or practice, grant injunctive relief restraining the defendants from engaging in such act or practice, and incidental to such injunctive relief, order the defendants to [31] restore to the tenant any excess rent collected since the effective date of the

said Housing and Rent Act of 1947, and which formed the basis for the injunctive relief. Thereupon, evidence was offered and received concerning the alleged violations relating to Apartment No. 412 referred to in the foregoing stipulation, and the Court having considered said evidence, the stipulation of counsel, and the agreement made by counsel, finds:

1. That the allegations contained in Paragraph I of defendants' answer to the plaintiff's amended complaint are and each of them is true.

2. That no jurisdiction of this action under the facts as disclosed by the amendment to the schedule attached to said amended complaint is conferred upon this Court by the provisions of Sections 205(c) and 205(e) of Emergency Price Control Act of 1942, as amended.

3. That the allegations contained in Paragraph III of the purported first cause of action in plaintiff's amended complaint are true.

4. That the said defendants Richman and Nagel are the owners of the premises described in said pre-trial stipulation and in Paragraph VI of said amended complaint, as trustees under the terms and conditions of a certain trust known as the "Richman Trust"; that the defendants received the rent referred to in said pre-trial stipulation; that the defendant Richman is and was at all times in the pleadings mentioned, a resident of the County of Los Angeles, State of California; that the defendant Nagel is and was at all times in the pleadings mentioned, a resident of the State of New Mexico;



that save and except as herein found to be true, each and all of the allegations in Paragraphs V and VI of the purported first cause of action of plaintiff's amended complaint are untrue.

5. That on March 1st, 1942, "the base period," said Apartment No. 412 was occupied by two persons only, and at all times in said complaint alleged, the maximum rent for said Apartment No. 412 [32] was in the sum of \$57.50 per month for occupancy by three persons; that on May 15th, 1944, and at all times subsequent thereto, said apartment was occupied by three persons, and the rents collected by the defendants for the use and occupancy of said apartment were not in excess of the maximum rent fixed therefor; that save and except as hereinbefore otherwise affirmatively found, each and all of the allegations contained in Paragraph VII of the purported first cause of action in plaintiff's complaint are untrue.

6. That the foregoing findings of fact pertaining to plaintiff's purported first cause of action in his amended complaint are hereby adopted by the Court as the findings of the Court in relation to Paragraph I of plaintiff's purported second cause of action in said amended complaint, and save and except as hereinbefore otherwise affirmatively found, each and all of the allegations in Paragraph II of said purported second cause of action in said amended complaint are untrue.

From the foregoing findings of fact, the Court concludes as a matter of law:

(1) That the plaintiff has no cause of action un-

der the Housing and Rent Act of 1947, for the recovery of any rents alleged to have been paid to the defendants in excess of the maximum rent fixed by said act, or for the recovery of treble the amount of such rents.

(2) That any cause of action to recover any alleged excess rents alleged to have been paid for Apartment No. 407 is barred by the provisions of Section 205 of the Emergency Price Control Act of 1942, as amended. (USCA Title 50, App. Sec. 901, et seq.)

(3) That the defendants Richman and Nagel were not, either as trustees or otherwise, engaged in any act or practice which constitutes a violation of any provision of the Housing and Rent Act of 1947, or regulations issued pursuant thereto, and are not about to engage in any act or practice which would constitute a violation of [32] any provisions of said act or any such regulation.

(4) That plaintiff is entitled to no relief herein, and is not entitled to the issuance of any injunction, and defendants are entitled to a judgment that plaintiff take nothing.

(5) That judgment be entered in accordance with the foregoing findings of fact and conclusions of law.

Dated this 19th day of March, 1948.

/s/ CHARLES C. CAVANAH,  
Judge.

[Endorsed]: Filed Mar. 19, 1948. [34]

In the District Court of the United States, Southern  
District of California, Central Division

No. 7504-BH (Civil)

TIGHE WOODS, Housing Expediter, Office of the  
Housing Expediter,

Plaintiff,

vs.

FREDERICK I. RICHMAN, et al.,

Defendants.

JUDGMENT DENYING INJUNCTION TO  
PLAINTIFF, AND DECREETING THAT  
PLAINTIFF TAKE NOTHING  
HEREIN

Heretofore, the above entitled action came on regularly for trial before the Honorable Charles A. Cavanah sitting as judge in the above entitled court on the 11th day of February, 1948, at the hour of 10:00 o'clock a.m., Cassel Jacobs, Esq. appearing as counsel for the plaintiff, Allen T. Lynch of Baillie, Turner & Lake appearing as counsel for the defendants, Frederick I. Richman and Lydia Blithe Richman Nagel, and the action having been dismissed as to all of the other defendants, and evidence having been offered and received, and certain stipulations made and entered into, and the court having made and signed its findings of fact and conclusions of law,

Now, therefore, it is ordered, adjudged and decreed:



(1) That the issuance of an injunction be and it is hereby denied. [35]

(2) That plaintiff take nothing herein.

Dated this 19th day of March, 1948.

/s/ CHARLES C. CAVANAH,  
Judge.

Approved as to form:

ABE I. LEVY,  
STEPHEN D. MONAHAN,  
FRANK L. HIRST,  
RICHARD G. SOLOF,  
CASSEL JACOBS,  
Attorneys for Plaintiff.

Received Feb. 27, 1948.

/s/ BENJAMIN CHAPMAN,  
For the Plaintiff.

Judgment entered Mar. 19, 1948. Docketed Mar. 19, 1948. Book C. O. 49, Page 382.

[Endorsed]: Filed Mar. 19, 1948. [36]

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, plaintiff above named, hereby appeals to the United States Circuit Court of Appeals for the

Ninth Circuit from the entire final judgment entered in this action on the 19th day of March, 1948.

Dated: May 20, 1948.

ABE I. LEVY,  
STEPHEN D. MONAHAN,  
FRANK L. HIRST,  
RICHARD G. SOLOF,  
CASSEL JACOBS,

By /s/ CASSEL JACOBS,  
Attorneys for Plaintiff.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed May 21, 1948. [38]

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[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH  
APPELLANT INTENDS TO RELY  
ON APPEAL

The District Court erred in:

I.

Excluding all evidence of rental overcharges received prior to July 1, 1947.

II.

Finding that the Court was without jurisdiction under sections 205(c) and 205(e) of the Emergency Price Control Act. (Second finding of fact).

III.

Concluding that Section 205 of the Emergency Price Control Act barred recovery of rental over-

charges for Apartment No. 407. (Second conclusion of law.) [40]

Entering final judgment for defendants.

Dated this 25th day of June, 1948.

/s/ ABE I. LEVY,

/s/ CASSEL JACOBS,

Attorneys for Appellant.

Service of copy of the foregoing Statement of Points is hereby acknowledged this 25th day of June, 1948.

BAILIE, TURNER & LAKE,

By /s/ FREDERICK W. LAKE,

Attorneys for Defendants-Appellees Frederick I. Richman and Lyda Blithe Richman Nagel.

[Endorsed]: Filed June 28, 1948. [41]

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[Title of District Court and Cause.]

APPELLANT'S DESIGNATION OF RECORD  
ON APPEAL

Appellant, Tighe E. Woods, as Housing Expediter, Office of the Housing Expediter, hereby designates the following portions of the Record to be included in the Record on Appeal.

1. The complaint filed August 15, 1947.
2. The amended complaint filed October 10, 1947.
3. The answer of defendants Frederick I. Richman and Lyda Blithe Richman Nagel, filed November 3, 1947.

4. Dismissal with prejudice as to defendant Hannah E. Weitz, filed December 31, 1947.

5. Transcript of the trial beginning after the noon recess on February 11, 1948, including all exhibits, but omitting the final arguments of counsel.

6. Plaintiff's objections to the proposed findings of fact and conclusions of law, filed March 16, 1948.

7. The findings of fact and conclusions of law, filed March 19, 1948.

8. Judgment of the Court entered March 19, 1948 in Civil Order Book 49 at Page 382.

9. Notice of Appeal filed May 21, 1948.

10. Statement of Points upon which appellant intends to rely upon appeal.

11. This Designation.

Dated this 30th day of April, 1948.

/s/ ABE I. LEVY,

/s/ CASSEL JACOBS,

Attorneys for Appellant.

Service of copy of the foregoing Designation of Record on Appeal is hereby acknowledged this 25th day of June, 1948.

BAILIE, TURNER & LAKE,

By /s/ FREDERICK W. LAKE,

Attorneys for Defendants-Appellees Frederick I. Richman and Lyda Blithe Richman Nagel.

[Endorsed]: Filed June 28, 1948. [43]

In the District Court of the United States, Southern  
District of California, Central Division

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 44, inclusive, contain full, true and correct copies of Complaint for Restitution and Injunction; Amended Complaint for Restitution and Injunction; Answer of Defendants Frederick I. Richman and Lyda Blithe Richman Nagel; Dismissal with Prejudice as to Defendant Hannah E. Weitz; Pre-Trial Stipulation; Plaintiff's Objections to Defendants' Proposed Findings of Fact and Conclusions of Law; Findings of Fact and Conclusions of Law; Judgment Denying Injunction to Plaintiff, and Decreeing that Plaintiff Take Nothing Herein; Plaintiff's Exhibit No. 1; Notice of Appeal; Statement of Points on Which Appellant Intends to Rely on Appeal; Designation of Record on Appeal and Order Extending Time to Docket Appeal which, together with copy of reporter's transcript of proceedings on February 11, 1948, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 7th day of July, A.D. 1948.

(Seal) EDMUND L. SMITH,  
Clerk,

By /s/ THEODORE HOCKE,  
Chief Deputy.

In the District Court of the United States for the  
Southern District of California,  
Central Division

Honorable Charles C. Cavanah, Judge presiding.

No. 7504-BH-Civil

FRANK R. CREEDON, Housing Expediter, Office  
of the Housing Expediter,

Plaintiff,

vs.

FRERERICK I. RICHMAN, LYDA BLITHE  
RICHMAN NAGEL, DOE I, and DOE II,  
Defendants.

REPORTER'S TRANSCRIPT OF  
PROCEEDINGS

Los Angeles, California,  
February 11, 1948

Appearances: For the Plaintiff: Messrs. Abe I. Levy, Stephen D. Monahan, Frank L. Hirst, Richard G. Solof, By Cassel Jacobs, Esquire. For the Defendants: Richman, Blithe and Nagel: Messrs. Bailie, Turner & Lake: and Allen T. Lynch, Esquire, By Allen T. Lynch, Esquire. [1\*]

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Los Angeles, California, Wednesday,  
February 11, 1948—2:00 p.m.

The Court: You may proceed.

The Clerk: No. 7504-BH, Civil, Frank R. Creedon and so forth, plaintiff, versus Frederick I. Richman and others, defendants.

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\* Page numbering appearing at foot of page of original certified Reporter's Transcript.



Mr. Lynch: Defendants are ready.

Mr. Jacobs: The plaintiff is ready.

The Court: The question presented at this time is whether the Act of 1942, under which the present action is brought, applies, and is exclusive, or whether the Act of 1947 applies and is exclusive.

In determining the scope of the relief demanded by the plaintiff an analysis of the two Acts becomes necessary.

From such an analysis we find that the Act of 1942 was terminated on June 30th, 1947, and from and after that date no maximum rents were maintained or established under it with respect to housing.

While the Act of 1947 confines its terms to granting injunctive relief against acts done after its adoption, which is merely a preventive remedy and affords relief against future acts and to keep or preserve a thing in status quo.

The Supreme Court in the Porter case, which has [11] been called to my attention, was construing acts under the Act of 1942 and points out that restitution therein ordered was incidental to the granting of the injunction.

The question of granting injunctive relief was involved there for acts done under the Act of 1942.

Under that Act acts were barred after the expiration of one year, so it seems that the acts here done before the 1947 Act was adopted, were beyond one year and Congress only kept alive acts done after the adoption of the Act of 1947.

The scope of the relief here sought is provided

for and governed by the Act of 1947 which limits acts performed after its adoption and providing for injunctive relief to preserve future acts and pertains to the enforcement of the Act of 1947 and preserves the status quo of the parties.

Under the pleadings here and the two Acts of Congress in question, the scope of the evidence pertains to the acts occurring after the adoption of the Act of 1947 and the statute maintaining the status quo of the parties.

If Congress intended to grant restitution for rents in the Act of 1947 it would have said so.

The Act of 1942 was dead on June 30th, 1947 and there was no more law in the country. Then Congress took up the matter and said, "We will extend it to only," as I construe the Act, "to acts in the future and to grant injunctive relief and hold the parties in status quo." and not [12] for the recovery of back rents.

It is clear to me, and of course the Supreme Court in the Porter case didn't directly pass on the question because the new Act wasn't before the Supreme Court in the Porter case, but my conclusion, gentlemen, is that in this present action the scope of the evidence is limited to the status quo of the parties when the new Act of 1947 was passed and for acts between the parties from there on.

It appears clear to me that if Congress wanted to keep the relief for past rent question in the Act of 1947, it would have said so, but they didn't. They dropped it and that Act has gone out of existence. It is terminated. Now, there is nothing

before us other than acts committed since the 1947 Act—injunctive relief, in other words.

If the tenants were in possession of the property at the time of the 1947 Act and were complying with their contracts or with the regulations the Act of 1947 would protect them in preventing the landlord from throwing them out. That is the only question here. Do I understand that these tenants are still in possession?

Mr. Lynch: Yes, your Honor.

The Court: They are still in possession?

Mr. Lynch: Yes, your Honor.

The Court: The scope of this inquiry here, if they have complied with the Act of 1947, would go only to the [13] granting of injunctive relief and maintaining their possession if they desire it.

That is the conclusion I have reached, gentlemen, so you may proceed with your evidence.

Mr. Lynch: That has eliminated entirely from consideration the Russell Simpson matter in Apartment No. 407. There is just no violation there now.

The Court: The plaintiff is granted an exception to the rule of the court.

Mr. Jacobs: Your Honor, the two violations which I will show by my evidence, occurred prior to June 30th, 1947, and according to my pleadings those are my allegations and, under those circumstances it seems to me that there is no use—I have no evidence to present and as I understand your Honor's ruling, evidence on those two violations is not material to this action, so I would presume under those circumstances that your Honor would

want to grant the defendants' motion to dismiss. I suppose that is what he was talking about this morning.

The Court: I am not ruling on the motion to dismiss now. It is up to you gentlemen to complete this case on whatever proof you have or that you want to offer.

It may be that there were some acts since June 30th, 1947—I mean, since the 1947 Act went into effect that you want to go into. It may be you will want to put on evidence [14] that others acts were committed and that something might be due these tenants. The court will allow you that opportunity. It is just a question of when these two laws were terminated and went into effect. Your question is a little broad. I am not shutting you off as far as you think I am.

To make myself clear, as I understand the scope of these pleadings, you have a perfect right to present evidence showing the status quo of these parties and you have a perfect right to present any acts committed since the adoption of the new Act and ask for an injunction.

Mr. Jacobs: As I understand your Honor's ruling, while I may present evidence as a basis for an injunction under the new Act, I am precluded from presenting evidence looking toward restoration.

The Court: You mean back rent?

Mr. Jacobs: Restitution of rent, overcharges before June 30th, 1947.

The Court: I am not trying to tell you how to try your lawsuit, but you can show that these ten-

ants, since the adoption of the Act of 1947 have complied with the regulations and that they are in possession and ask for injunctive relief. You have a right to show that. If you do show that the new Act steps in and governs the proceeding. If you do that you are entitled to injunctive relief and for all violations of regulations, whatever they were, since the [15] new Act went in force. You have that privilege.

Mr. Jacobs: I will move the court at this time for leave to substitute Tighe Woods in place of Frank R. Creedon as the plaintiff in this action.

Mr. Lynch: I have no objection.

The Court: The motion is granted.

Mr. Jacobs: At this time I will dismiss the action as to all fictitious defendants, Doe I and Doe II.

The Court: There is no objection? The motion is granted.

Mr. Lynch: I have no objection.

Mr. Jacobs: My first witness will be Mr. Cousins, but before I begin to question Mr. Cousins, for the sake of the record here and to make my record clear, we can stipulate that the evidence or the testimony I would like to offer by Mrs. Mary B. Schoning, Mrs. Roberta Stroebel, and Mrs. Russell Simpson would be testimony relative to rent collections before June 30th, 1947, and that I need make no formal tender of that testimony so that we can save that time.

Mr. Lynch: There is no objection to that at all. The stipulation recites when those rents were paid



and recites what the amounts were, so I don't think there is any question involved as to that.

Mr. Jacobs: In that event may I ask the court to [16] excuse those witnesses, Mrs. Schoning and Mrs. Stroebel and Mrs. Simpson?

The Court: Yes, they will be excused. You don't want them to remain, counsel?

Mr. Lynch: Not so far as I am concerned.

The Court: Then they may be excused.

Mr. Jacobs: Mr. Cousins, will you be sworn?

### HAROLD COUSINS,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Harold Cousins.

### Direct Examination

By Mr. Jacobs:

Q. Mr. Cousins, you are a resident of the Fountain Manor Apartments? A. Yes, sir.

Q. And what apartment do you occupy?

A. 412.

Q. When did you move into that apartment?

A. April 15th, 1942. [17 and 18]

Q. Where were you living before April 15th, 1942? A. 1197 North Ardmore, Los Angeles.

Q. What rent do you pay at that apartment?

A. At the present time \$57.50.



(Testimony of Harold Cousins.)

Q. What did you pay when you moved in in April of 1942? A. \$47.50.

Q. How long did you pay \$47.50 rent?

A. Until May 1944.

Q. When you moved into the apartment was there any agreement or paper signed between you and the owners of the apartment house?

A. Yes, a rent agreement and an inventory.

Q. Do you have that with you?

A. Yes, sir.

Q. With whom did you negotiate for the renting of this apartment?

A. The present owner—the owner at that time, Mrs. Weitz, and the manager, Mrs. Skellington.

Q. May I see your rent agreement?

Mr. Lynch: No objection.

Mr. Jacobs: I will offer this in evidence.

The Court: It will be received.

(The document so offered was thereupon marked Plaintiff's Exhibit No. 1, and was received in evidence.) [19]



# Standard Monthly Rent Agreement

Appt., Room, Suite or Unit No. 112

Department/Hotel, Apartments and Bungalow Co.

THIS AGREEMENT entered into this 15 day of April, 1948 by and between

"as agent of the operator of (NAME OF APARTMENTS, COURT, ETC.) and herein called guest, whereby the guest rents from said operator those certain premises known and described as

No. 112 located at 711 California, for tenancy from month to month commencing on the 15 day of April, 1948 and at a monthly rental of \$2.00

(APT., ROOM, SUITE, UNIT) 112 The rental said guest expressly agrees to pay each month in advance, commencing on the day last mentioned. It is agreed that the tenancy hereby created shall terminate at 12:00 o'clock Noon on the day of the termination of the tenancy. It is further agreed that the said premises shall be occupied by no more than 2 adults and 1 children.

This agreement is subject also to the following covenants and conditions:

- Any failure by guest to pay rent or other charges upon day due, or to comply with any other term or condition hereof shall terminate forthwith this tenancy, at the option of operator, and the guest hereby expressly waives any notice to quit and surrender possession of said premises, and operator or his agent may enter said premises and take and retain possession of the same and exclude guest therefrom.
- Said tenancy may be terminated by either party by giving written notice to the other of intention to terminate at least SEVEN (7) days before the expiration of the term of tenancy, and said operator or his agent shall have the right to enter and take possession of said premises upon expiration of said notice in addition to any other remedy provided by law. Operator may change the terms of this agreement at any time by giving written notice to guest of such change or changes at least SEVEN (7) days before expiration of the term of this tenancy.
- In the event of failure by guest to give notice herein required of his intention to terminate this tenancy, he shall be liable for another term, and in event he shall abandon, or attempt to abandon, said premises or remove his property from said apartment, the rental for such additional term shall, at the option of operator, become immediately due and payable.
- Failure by operator to exercise any of his rights arising under this agreement shall not be considered a waiver of any right or condition thereof.
- Guest agrees that he will not keep or permit to be kept in said premises any dog, cat, parrot or other bird or dumb animal.
- Guest agrees not to violate any City ordinance or State law in or about said premises.
- Guest agrees to pay the following as a part of the rental of said premises: all charges for electricity, gas and telephones and all charges for laundering of linens, blankets and curtains of said premises; also to pay the operator, in advance, at least one week before the termination of this tenancy, the following: the reasonable estimated cost of laundering blankets and curtains of said premises after vacation thereof, and for cleaning said premises \$3.00 for quarters of two rooms and bath or less, or \$5.00 for quarters of three or more rooms and bath after vacation thereof.
- Upon incurrence by guest of any charge it shall become immediately due and payable.
- Guest shall not transfer his interest in or to this agreement, nor shall guest assign or sublet said premises.
- Guest hereby agrees in event suit is instituted to collect any of the moneys due under this agreement, or for damages to said property, that he will pay such additional sum for attorney's fees, as the Court may adjudge reasonable.
- Date of payments, rate of rental, conditions of agreement or term of tenancy may be changed by mutual agreement of the parties, endorsed hereon, without affecting or changing any other part of this agreement.
- Operator reserves the right to himself or his agent to enter said premises at reasonable times to inspect or clean same or for any other lawful purpose.
- It is agreed that operator shall not be liable or responsible in any way for loss of or damage to any article belonging to said guest, or located in said premises, or other premises under control of operator; that no right of storage is given by this agreement and that operator is not liable for non-delivery of messages.
- Nothing contained in this agreement shall be construed as waiving any of operator's rights under laws of the State of California.
- Guest hereby acknowledges receipt in good condition of furniture and equipment listed hereunder, and agrees to pay for all breakage, loss and damage thereof.

FURNISHINGS		KITCHEN UTENSILS	
Ash Tray	Table Lamp	Sherberts	Knives and Forks
Beds	Towel Rack	Sugar Bowl	Match Box
Carpet	Vase	Tumblers	Mop
Chairs	Waste Basket	Vinegar Cruet	Measuring Cup
Chifonier		Water Pitcher	Milk Pan
Consoles		Wine Glasses	Mixing Bowl
Console Table	CHINA		Muffin Tin
Coffee Table	B. and B. Plates	SILVER	Paring Knife
Davenport	Bouillon Cups	Butter Knife	Perculator
Day Bed	Bowls	Forks	Pie Tins
Desk	Creamer	Knives	Potato Masher
Dining Table	Cups	Solid Forks	Pudding Pan
Dresser	Dinner Plates	Soup Ladles	Refrigerator
Dressing Table	Egg Cups	Soup Spoons	Roasting Pan
Dressing Table Bench	Glasses	Sugar Spoons	Rolling Pin
Dressing Table Stool	Gravy Boat	Table Spoons	Salt Box
End Table	Oat Meal	Tea Spoons	Sauce Pans
Floor Lamp	Platters		Scrub Brush
Keys	Pie Plates	LINENS	Shakers
Mattress	Sauce Dishes	Bath Mat	Sink Strainer
Mazda Lamps	Saucers	Bath Rug	Skillet
Mirror	Soup Plates	Bath Towels	Soap Dishes
O'stuffed Chair	Tea Plates	Comforts	Soup Strainer
O'stuffed Rocker	Tea Pots	Dresser Top	Sugar Canister
O'stuffed Bed Couch	Trays	Face Towels	Table Mats
Pictures	Vegetable Dish	Kitchen Towels	Table Spoon
Pillows		Mattress Cover	Tea Canister
Pr. Draperies	GLASS	Napkins	Tea Kettle
Pr. Window Curtains	Creamer	Pair Blankets	Tea Spoons
Rockers	Fruit Bowls	Pillow Slips	Tea Strainer
Runner	Fruit Dishes	Scarfs	Tin Lids
Rugs	Jelly Dish	Sheets	Toaster
Small Rugs	Lemon Squeezer	Shower Curtains	Wire Fork
Shades	Oil Cruet	Silence Cloth	
Slipper Chair	Pepper Shaker	Spreads	
Smoking Sets	Salt Shaker	Table Cloths	
Soap Rack	Pickle Tray		

## MISCELLANEOUS

14. This agreement shall inure to the benefit of the operator and his successors in interest. IN WITNESS WHEREOF, both parties have set their hands the day and year first above written.

Y. S. [Signature] 711 [Signature]  
 \*Operator/Agent Guest in Possession



(Testimony of Harold Cousins.)

Q. By Mr. Jacobs: How many people occupied apartment 412 in April of 1942?

A. Myself and my wife and my son, three people.

Q. How many people occupy the apartment now? A. Three people, the same amount.

Q. It has been occupied by three people from March of 1942 to date? A. Yes, sir.

Mr. Lynch: I move that the answer of the witness be stricken on the ground that the witness testified that he only moved in in April and not in March. He doesn't know what the rent was in March and how many people were in occupancy, so it is a conclusion of the witness as to what was paid in March.

Mr. Jacobs: Will you read the question back?  
(Question read.)

Mr. Lynch: Object to it on the ground the witness is testifying as to a conclusion it was occupied. He testified he didn't move in until April so he obviously doesn't know what the occupancy was in March.

Mr. Jacobs: I will withdraw the question.

Q. By Mr. Jacobs: It has been occupied by three people from April 1942 to date?

A. From April 15th, 1942.

Q. Are you acquainted with a Mr. Dallas Mead?

A. No, sir, I am not.

Q. Did you ever see a Dallas Mead?

A. No, sir, I did not.

(Testimony of Harold Cousins.)

Q. Did anyone—did any mail arrive at Apartment 412 as far as you know for Mr. Mead?

A. No, sir.

Mr. Lynch: Just a minute. I object to this as wholly immaterial, whether mail did or did not arrive for Mr. Dallas Mead.

The Court: I don't know what it is going to lead up to. It may be admitted. You may proceed.

Mr. Jacobs: No more questions, your Honor.

Mr. Lynch: I have no questions.

The Court: You are excused.

Mr. Jacobs: The plaintiff will rest.

Mr. Lynch: The defendant has no testimony. The defendant rests.

The Court: Proceed with the argument.

Mr. Jacobs: According to the pre-trial stipulation, your Honor, we have agreed as a matter of fact what the legal maximum rent on the apartment was, but the rent paid on Apartment 412, occupied by Mr. Cousins between May 15th, 1944, and August 15th, 1947, was \$47.50 a month.

Now, I have shown by Mr. Cousins' testimony that he moved in in April of 1942; that three people moved in the [21] apartment at that time and that the rent charged him at that time was \$37.50.

I have in evidence here an inventory which shows that the defendant landlord knew that three people were moving in at that time and that he charged \$47.50 at that time. That April 15th, 1942, was the next month after the maximum legal rent date,



which was March of 1942, one month afterwards—that is the evidence of what the legal maximum rent was for this apartment. Three people moved in in April and were charged \$47.50. That went on for 25 months, according to the testimony, and then the landlord raised the rent to \$57.50. Increased the rent \$10.00 a month.

The evidence is conclusive in this situation that the legal maximum rent was \$47.50 because the housing regulations provide that in the event that the housing accommodations are not rented in March that the first time they are rented after March 1942 determines the legal maximum rent.

Now, it might have been possible for the defendant to present evidence here that these premises were rented in March 1942 but he hasn't chosen to do so.

There is just one fact in evidence as far as the renting of these premises is concerned and that again in April of 1942. At that time the rent for three people was \$47.50 and consequently on the evidence introduced here in court that is the legal maximum rent and the rent of \$57.50 [22] per month that has been collected between May 15th, 1944, and August 15th, 1947, is an overcharge of \$10.00 a month.

The Court: And what do you claim that was?

Mr. Jacobs: That totals the sum of \$380.00.

Mr. Lynch: If the court please, it seems indisputable to me that the burden is on the expediter to show that the maximum rent was other than the

rent collected and that there has been a violation. However, our witness has just come into the room and with the court's permission I would like to re-open as far as the defendant is concerned, and put on the testimony as to the occupancy on March 1st, which was the rent control date.

The Court: You may do so.

OLIVER G. PIRIE

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Pirie, Oliver G.

Direct Examination

By Mr. Lynch:

Q. What is your address, Mr. Pirie?

A. 5307 La Mirada Avenue, Hollywood. [23]

Q. Mr. Pirie, are you the father-in-law of Dallas Mead?

A. I was the father-in-law of Dallas Mead.

Q. Do you know where Dallas Mead was residing in March of 1942?

A. I can't say all of March. Sometime in the early part of March or toward the middle he and my daughter broke up housekeeping. They were living at that time at the Fountain Manor.

Q. On the first day of March of 1942 they were living at the Fountain Manor in Hollywood?

A. As best my memory serves me.

(Testimony of Oliver G. Pirie.)

Q. And at that time how many people were occupying the apartment which they were renting?

A. They were newlyweds.

Q. Just two people?

A. Just two people.

Mr. Lynch: That is all.

Mr. Jacobs: No questions. Do you rest, Mr. Lynch?

Mr. Lynch: No, just one minute. I would like to call Mr. Richman.

### FREDERICK I. RICHMAN

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows: [24]

The Clerk: State your full name.

The Witness: Frederick I. Richman.

#### Direct Examination

By Mr. Lynch:

Q. Mr. Richman, you are one of the defendants in this case? A. Yes, sir.

Q. And Lyda Blithe Richman Nagel is your sister? A. Correct.

Q. And you and Mrs. Nagel are the trustees of the Richman Estate? A. Yes, sir.

Q. And that estate is the owner of the property known as the Fountain Manor?

A. That is right.

Q. In which is situated this particular apart-

(Testimony of Frederick I. Richman.)

ment which has been occupied by Mr. Harold Cousins since April of 1942?

A. I don't know as to when he moved in. The trust didn't acquire the property until January of 1944.

Q. But you are the owner of it at the present time? A. Yes, sir.

Q. As such trustee? A. Yes, sir. [25]

Q. Mr. Richman, I show you what purports to be notice to landlord of proceedings to determine the maximum rent and ask you if that document was received by you on or about July 11th, 1945?

A. Shortly thereafter.

Q. And there is attached to that a maximum rent for rooms rented or offered for rent schedule which lists this particular apartment and was in reference to this particular apartment. It was in reference to this particular apartment, was it not?

A. Well, the Fountain Manor is registered under what is known as the hotel and rooming house registration which registration provides daily, weekly and monthly rates for one, two and three people. That was the registration as of March 1st, 1942.

The registration which was filed with the OPA at that time listed for apartment 412 a daily rate of \$3.00, \$3.00 and \$3.50. For one, two or three persons a weekly rate of \$15.00, \$15.00 and \$16.50.

For one, two or three persons a monthly rate of \$47.50, \$47.50, and \$57.50.

(Testimony of Frederick I. Richman.)

This notice to landlord of proceedings to determine maximum rents proposed to reduce the rent on Apartment 412 insofar as monthly rates were concerned, to \$45.00, \$45.00 and \$57.50 for one, two and three people. [26]

Q. Mr. Richman, do you have the registration of this particular apartment as of March 1st, 1942?

A. I have the registration as was turned over to me, yes.

Q. Will you get that?

A. Do you mean the OPA registration or the house registration from which the OPA registration was prepared?

Q. Let us have the OPA registration.

A. Yes.

Q. What does the OPA registration list as the rental for this property?

A. \$3.00, \$3.00 and \$3.50 for one, two and three persons on a daily rate.

\$15.00, \$15.00 and \$17.50 for one, two or three persons on a weekly rate.

\$57.00—\$47.50, \$47.50 and \$57.50 for one, two or three persons on a monthly rate.

Q. In other words, it was registered as \$57.50 for three persons? A. That is correct.

Mr. Jacobs: I object to that and move the answer be stricken. I think the registration should be introduced into evidence.

Mr. Lynch: I am willing that be done except we only have this one and I thought since the Gov-

(Testimony of Frederick I. Richman.)

ernment is involved [27] and I know they are acting as prosecutor and not persecutors; that they are very liberal about the use of records and I assume that they will stipulate that that is the fact.

Mr. Jacobs: I will stipulate that is the registration.

Mr. Lynch: Thank you.

The Court: Do you insist on your motion?

Mr. Jacobs: Yes, your Honor—No, I will withdraw the motion and stipulate that is the registration.

Mr. Lynch: We have it, but it is our only copy.

Q. By Mr. Lynch: Now, was there turned over to you at the time you acquired the apartment a statement made up by the owner as to the registration of the property? A. There was.

Q. Do you have that statement? A. I do.

Mr. Jacobs: You don't need to question him about that. You can read that into evidence.

Mr. Lynch: The former owner, H. E. Weitz, reported this property as being occupied by two people on the rent control date.

Mr. Jacobs: Yes.

Mr. Lynch: Thank you, counsel. At \$47.50, \$47.50 a month.

Q. By Mr. Lynch: Now, I show you a notice dated August 26th, 1946, from the Los Angeles Defense Rental Area [28] and ask you if you received that on or about the date it bears?

A. I did.



(Testimony of Frederick I. Richman.)

Q. And is there a reference in that document to the rent for this particular apartment?

A. There is. This is a continuation of the docket number of the original proceeding which you just mentioned or identified heretofore, to determine the maximum rent. This is an order from the Area Rent Director. The other was a proceeding.

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Mr. Lynch: Will counsel stipulate with me that the order from the Area Rent Director dated August 26th, 1946, fixes the maximum rent for the apartment here in question at \$47.50 for one person, \$57.50 for two persons, and \$57.50 for three persons.

Mr. Jacobs: I will so stipulate.

Mr. Lynch: That is all.

Mr. Jacobs: No cross-examination.

Mr. Lynch: The defendant rests.

Mr. Jacobs: I have no more evidence, your Honor.

The Court: How many people have been occupying this place?

Mr. Lynch: Three.

Mr. Jacobs: Three people.

The Court: You agree on that? [29]

Mr. Jacobs: No question about that.

If the Court please, this case has taken a rather

strange turn because I believe that both counsel for defendants and myself had in mind a trial of the case \* \* \*.

(Argument reported but not transcribed at the request of Mr. Jacobs.)

The Court: In the second paragraph of the complaint there is a prayer for injunction. Do you insist on an injunction?

Mr. Jacobs: No, we don't insist on an injunction. That was a relief that was asked for when we drew the original schedule which has since been cut down.

The Court: That being the case the findings of the court will have to be for the defendants. You will prepare the decree.

Mr. Lynch: Yes.

The Court: Do you waive findings?

Mr. Jacobs: No, I wouldn't want to waive findings.

The Court: Then that concludes the matter.

(Whereupon, at 2:45 o'clock p.m., the above entitled matter was concluded.) [30]

### CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified

therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 13th day of May, A.D. 1948.

/s/ J. D. AMBROSE,  
Official Reporter.

[Endorsed]: Filed June 28, 1948.

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[Endorsed]: No. 11970. United States Circuit Court of Appeals for the Ninth Circuit. Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, Appellant, vs. Frederick I. Richman and Lyda Blithe Richman Nagel, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed July 8, 1948.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 11970

TIGHE E. WOODS, Housing Expediter,  
Office of the Housing Expediter,  
Appellant,

vs.

FREDERICK I. RICHMAN and LYDA BLITHE  
RICHMAN NAGEL, HANNAH E. WEITZ,  
heretofore sued as Doe I and Doe II,  
Appellees.

STATEMENT OF POINTS ON WHICH  
APPELLANT INTENDS TO RELY  
ON APPEAL

The District Court erred in:

1. Excluding all evidence of rental overcharges received prior to July 1, 1947.
2. Finding that the Court was without jurisdiction under sections 205(c) and 205(e) of the Emergency Price Control Act. (Second finding of fact.)
3. Concluding that Section 205 of the Emergency Price Control Act barred recovery of rental

overcharges for Apartment No. 407. (Second conclusion of law.)

4. Entering final judgment for defendants.

Dated this 23rd day of July, 1948.

/s/ ED DUPREE,

General Counsel,

/s/ HUGO V. PRUCHA,

Assistant General Counsel,

/s/ FRANCIS X. RILEY,

Special Litigation Attorney,

Attorneys for Appellant.

[Affidavit of service by mail attached.]

[Endorsed]: Filed July 26, 1948. Paul P. O'Brien, Clerk.

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[Title of Circuit Court of Appeals and Cause.]

APPELLANT'S DESIGNATION OF RECORD  
ON APPEAL

Appellant, Tighe E. Woods, as Housing Expediter, Office of the Housing Expediter, hereby designates the following portions of the Record to be included in the Record on Appeal.

1. The complaint filed August 15, 1947.
2. The amended complaint filed October 10, 1947.
3. The answer of defendants Frederick I. Richman and Lyda Blithe Richman Nagel, filed November 3, 1947.

4. Dismissal with prejudice as to defendant Hannah E. Weitz, filed December 31, 1947.

5. Transcript of the trial beginning after the noon recess on February 11, 1948, including all exhibits, but omitting the final arguments of counsel.

6. Plaintiff's objections to the proposed findings of fact and conclusions of law, filed March 16, 1948.

7. The findings of fact and conclusions of law, filed March 19, 1948.

8. Judgment of the Court entered March 19, 1948, in Civil Order Book 49 at Page 382.

9. Notice of Appeal filed May 21, 1948.

10. Statement of Points upon which appellant intends to rely upon appeal.

11. Designation of Record in Court below.

12. This Designation.

Dated this 23rd day of July, 1948.

/s/ ED DUPREE,

General Counsel,

/s/ HUGO V. PRUCHA,

Assistant General Counsel,

/s/ FRANCIS X. RILEY,

Special Litigation Attorney,

Attorneys for Appellant.

[Endorsed]: Filed July 26, 1948. Paul P. O'Brien, Clerk.